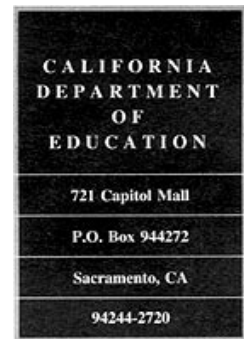




**DELAINE EASTIN**  
State Superintendent of Public Instruction



December 23, 1996

**To:** County and District Superintendents of Schools

**From:** Gabriel Cortina, Deputy Superintendent  
Specialized Programs Branch

**Subject:** **GUN-FREE SCHOOLS ACT**  
**Requirements for Federal Fund Eligibility**

The document attached to this letter provides information concerning State and local responsibilities resulting from the *Gun-Free Schools Act (GFSA)* enacted on October 20, 1994 as part of the Improving America's Schools Act (IASA). These responsibilities include the implementation of disciplinary policies designed to increase the safety levels of school campuses, and the collection of data about implementation of the policies. This information is being provided in part because there has been some confusion caused by the fact that a similarly-named statute, the *Gun-Free School Zones Act* of 1990, has been partially invalidated by a Supreme Court decision.

In a 1995 decision related to *US v. Lopez*, the US Supreme Court invalidated provisions of the *Gun-Free School Zones Act* which made it a criminal offense for an individual knowingly to possess a firearm in a school zone. The Court's decision **did not** invalidate or affect the Gun-Free Schools Act. This means that the requirements which State and local educational agencies must meet to qualify for federal IASA funding have not changed. Those requirements are discussed in some detail in the attachment, which contains information about the following subjects, among others:

- The GFSA requirement for a State law requiring local education agencies (LEAs) to expel for a period of not less than one year a student who is determined to have brought a weapon to school
- Requirements that LEAs annually submit various types of expulsion data and other information to the State Education Agency for submission to the US Department of Education (USDOE)
- Requirements that there be, for expelled students, an established due process and referral policy to the criminal justice or juvenile delinquency system

- ☛ The State laws which implement the requirements of GFSA
- ☛ The USDOE definition of “weapon”
- ☛ The State requirement that all expelled students be provided with educational services in an alternate setting
- ☛ The requirements for treatment of a student with a disability who has brought a weapon to school

If you require further information about the GFSA and associated state laws, you may contact the department staff people who are listed at the end of the attachment.

Attachment

## **GUN-FREE SCHOOLS ACT Requirements for Federal Fund Eligibility**

This document provides information concerning State and local responsibilities resulting from the Gun-Free Schools Act (GFSA), Part XIV of the Elementary and Secondary Education Act (ESEA) of 1965, enacted on October 20, 1994 as part of the Improving America's Schools Act (IASA) of 1994 (P.L. 10-3-382). These responsibilities include disciplinary policies and actions designed to increase the safety levels of school campuses and specific data collection to measure their consequences.

In its 1995 decision related to *U.S. v. Lopez*, the U.S. Supreme Court invalidated provisions of the Gun-Free School Zones Act of 1990 which made it a criminal offense for an individual knowingly to possess a firearm in a school zone. The Court's decision **did not** invalidate or affect the Gun-Free Schools Act. Because the two statutes have similar names, there has been some confusion about the responsibilities of State and local educational agencies to qualify them for the federal funding available from IASA. The State and local education agencies must continue to implement the requirements of the Gun-Free Schools Act.

### **Background Information**

GFSA requires each State receiving funds under ESEA to have in effect a State law requiring local education agencies (LEAs) to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school. Each State's law must also provide that each district's chief administering officer may modify the expulsion requirement on a case-by-case basis.<sup>1</sup> In addition, under the GFSA, LEAs receiving ESEA funds must adopt a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to school.

### **Action Required by the State Education Agency**

The GFSA requires that each State receiving Federal funds must (1) have a State law requiring local education agencies (LEAs) to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school (refer to the section "Definitions" for the specific types of weapons included in this required action), (2) have a State law allowing the 'chief administering officer' to modify the expulsion requirement on a case-by-case basis, and (3) annually report, to the U.S. Department of Education, expulsion information submitted by LEAs. Each State Department of Education must also ensure that no IASA funds, regardless of title authorization, are made available to an LEA that does not have an expulsion and referral policy consistent with the requirements of GFSA.

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<sup>1</sup> Under the Individuals with Disabilities Education Act (IDEA), LEAs can discipline students with disabilities in accordance with the requirements of Part B of IDEA and Section 504 of the Rehabilitation Act, and thereby maintain eligibility for IASA funding. Please refer to the Advisory section, GFSA, and the Individuals with Disabilities Education Act for further information.

The GFSA requires states to provide annual reports to the U.S. Secretary of Education concerning the implementation of the Act's requirements. The Secretary is required to report to Congress if any State is not in compliance with the GFSA and is required to collect data on the incidence of children with disabilities engaging in threatening behavior or bringing weapons to school.

### **Action Required by Local Education Agencies**

LEAs will be required to provide assurances to the California Department of Education (CDE) that (1) the GFSA requirement for the one-year expulsion is met; (2) the LEA's expulsion data and information will be presented in an annual report to CDE (described in the following section); and (3) there is an established due process and referral policy for expelled students to the criminal justice or juvenile delinquency system. These assurances may be included in the 1996-97 Consolidated Application for Funding Categorical Aid Programs and are currently part of the Coordinated Compliance Review (CCR) program items.

The one year expulsion requirement does not allow school districts to waive due process rights for students. If, after due process has been accorded, a student is found to have brought a weapon to school, the GFSA requires an expulsion period of not less than one year subject to the case-by-case exception.

### **Data Collection and Reporting Procedures**

CDE is required to report to the U.S. Department of Education (USDOE) about the LEA compliance to requirements in the GFSA. The required information includes specific information about the expulsions resulting from the GFSA, such as:

1. the number of students expelled who bring a firearm to school by grade level and type of firearm (e.g., handgun, rifle/shotgun);
2. the number of expulsions modified by the LEA's chief administering officer under the case-by-case exception allowed by Section 14601 (b) (1) of the GFSA;
3. the number of expulsions imposed on students with disabilities as defined in Section 602 (a) (1) of the Individuals with Disabilities Education Act (IDEA);
4. the number of expulsions that resulted in a referral to an alternative school or program;
5. the names and addresses of each LEA that has not provided an assurance that it is in compliance with the State law requiring an expulsion period of one year of a student who brings a firearm to school; and
6. the names and addresses of each LEA that has not provided an assurance that it has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to a school.

CDE will design and forward the reporting instrument to LEAs after the U.S. Secretary of Education has adopted a final reporting document. In the meantime,

school districts and county offices of education are highly encouraged to consider interim strategies for collecting the needed data and assurances as identified in items 1 through 6 above.

### Supportive California State Statutes

Consistent with the GFSA expulsion requirements, the California State Legislature enacted and the Governor signed 1995 legislation (Assembly Bill 922 (Chapter 974, Statutes of 1995) and Senate Bill 966 (Chapter 972, Statutes of 1995)) which amended the Education Code, significantly affecting suspension and expulsion responsibility for school districts.<sup>2</sup> *Education Code* sections 48915 and 48916 meet the federal expulsion requirements for IASA. As a consequence of that legislation, (1) the principal or superintendent must recommend a student for expulsion if he or she possesses, sells, or otherwise furnishes a firearm at school or a school activity off-campus; and (2) local governing boards must set a date of one year from the date an expulsion occurred when a pupil is expelled for possessing a firearm at school or off-campus school activity, except that the governing board is authorized to set an earlier date on a case-by-case basis. The governing board also has the responsibility for reviewing each student's performance during the expulsion period for readmission to a school maintained by the district. *Education Code* Section 48902 requires the principal or the principal's designee to notify the appropriate law enforcement authorities of any acts related to assault with a deadly weapon (*Penal Code* Section 245) **before** suspending or expelling any student.<sup>3</sup> Although the Section 48902 does not require school districts or county offices of education to establish a policy statement about notifying the appropriate law enforcement agency if a student brings a firearm to a school campus or school-sponsored activity, the LEA **is required** to do so as part of its eligibility for any federal IASA funds.

### Definitions

**Weapon.** The GFSA guidance document from the U.S. Department of Education defines a 'weapon' as a firearm as defined in Section 921 of Title 18 of the United States Code. According to Section 921, the following are included within the definition:

1. any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;

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<sup>2</sup> For specific expulsion requirements and services provided for expelled students contained in AB 922, please refer to the Program Advisory SPB: 95/96-04, dated March 6, 1996.

<sup>3</sup> As defined by subdivision (b) (2) of the *California Code of Regulations* Section 700 and the California Safe Schools Assessment Program, 'assault with a deadly weapon' refers to the use of a firearm, or other dangerous weapons or instruments against another person. A deadly weapon can be a firearm; stun gun or laser; bows and arrows; knives or other cutting instruments; clubs; bottles; explosives; and body parts, such as teeth, hands, fists, and feet.

2. the frame or receiver of any weapon described above;
3. any firearm muffler or firearm silencer; and
4. any destructive device, which includes:
  - a. any explosive, incendiary, or poison gas (e.g., bomb, grenade, rocket having a propellant charge of more than four ounces, a missile having an explosive or incendiary charge of more than one-quarter ounce, a mine or similar device)
  - b. any weapon which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has a barrel with a bore of more than one-half inch in diameter
  - c. any combination or parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled

Antique firearms are not included in the definition (Section 921), nor are Class-C common fireworks (Bureau of Alcohol, Tobacco, and Firearms). Additional information about whether a particular weapon is a firearm under this definition can be obtained from the U.S. Department of Education, Safe and Drug-Free Schools Program, at (202) 260-3954.

**Expulsion.** The term ‘expulsion’ is not defined by the GFSA; however, at a minimum, expulsion means removal from the student’s regular program. Expulsion does not mean that a student is merely moved from a regular program in one school to a regular program in another school. LEAs should ensure that a student who is determined to have brought a firearm to school is effectively removed from that setting.

**Chief Administering Officer.** The ‘chief administering officer’ of each local school district is not defined by GFSA and may mean either the superintendent or the school board. According to the U.S. Department of Education, each LEA should determine, using its own legal framework, which chief operating officer or authority (e.g., superintendent, board, etc.) has the power to modify the expulsion requirement on a case-by-case basis. In California, the chief administering officer of a school district is the superintendent, acting under the direction of the governing board, so the superintendent is responsible for carrying out the decision to modify expulsion terms.

### **Alternative Educational Services**

The GFSA requirements **do not** prevent a State from allowing an LEA that has expelled a student from that student’s regular school setting from providing educational services to such student in an alternative setting (subdivision (a) (1) of Section 14061 of P.L. 103-382). Federal guidelines describe an ‘alternative setting’ to be one that is clearly distinguishable from the student’s regular school placement. Thus,



the GFSA is consistent with the newly enacted Education Code Section 48916.1, which requires school districts to ensure that an educational program is provided for all expelled students. The educational programs can be in community day schools pursuant to sections 48660-48664, or in county community schools pursuant to sections 1981 et seq. School districts and county offices of education are advised to review the program advisory related to educational alternatives (SPB: 95/96-04, Expulsion Policies and Educational Placements) for further information.

These two requirements mean that there are options allowed in the disposition of a student with a disability who has brought a weapon to school. CDE's Special Education Division has received guidance from the USDOE Office of Special Education and Rehabilitative Services on the required process for dealing with this situation. Below is an overview of the process:

1. the district suspends the student for up to 10 consecutive days;
2. the district convenes the student's individualized education plan team to determine an interim placement which may be in effect for up to 45 days;
3. the district conducts a hearing to determine if the student's behavior was a manifestation of the student's disability;
4. if the student's conduct was not a manifestation of the disability, the district **may expel, but must provide continued services**;
5. if the student's conduct was a manifestation of the disability, the district may initiate a change in placement, but **may not expel**; and
6. if the parent requests a due process hearing, the student remains in the alternative setting established by the IEP team until the dispute is resolved.

Additional details on the IDEA process can be obtained from Paul Hinkle, Special Education Consultant, at (916) 327-3513. For further information about other aspects of the GFSA, please contact Chuck Nichols, Assistant Consultant, at (916) 323-1026; Karen Lowrey, Consultant, at (916) 323-1027; or Linda Davis-Alldritt, Consultant, at (916) 327-5930. For information regarding community day schools, please contact Susan Bennett, Administrator, at (916) 323-5015, and for information about county community day schools, please contact Clara Chapala, Consultant, at (916) 323-2562.